AO 241
(Rev. 10/07)

14-151

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: WESTERN
Name (under which you were convicted): TERRANCE FOWLER	Docket or Case No.: CP-25-CR-000253-2010
Place of Confinement : SCI - SMITHFIELD	Prisoner No.: KF 4317
Petitioner (include the name under which you were convicted) TERRANCE FOWLER	v. Respondent (authorized person having custody of petitioner) JON FISHER, et. al,
The Attorney General of the State of PENNSYLVANIA	

FILED
MAY 23 2014
CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
Court of Common Pleas, Erie County

(b) Criminal docket or case number (if you know): CP-25-CR-000253-2010

2. (a) Date of the judgment of conviction (if you know): July 17, 2011

(b) Date of sentencing: September 20, 2011

3. Length of sentence: 27 1/2 to 55 yrs

4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No

5. Identify all crimes of which you were convicted and sentenced in this case:

Attempted Homicide, Aggravated Assault, Conspiracy to Robbery, Robbery

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☐ (2) Guilty ☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Superior Court of Pennsylvania, Western District

(b) Docket or case number (if you know):

(c) Result: Superior Court of Pennsylvania affirmed June 1, 2012

(d) Date of result (if you know): June 1, 2012

(e) Citation to the case (if you know): No. 1787 WDA 2011

(f) Grounds raised: 1) challenge the sufficiency of the evidence 2) Court Failure to instruct jury on the use of impeachment evidence 3) Failed to establish corpus delecti

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Erie County Court of Common Pleas

(2) Docket or case number (if you know): No. 2536 of 2010

(3) Date of filing (if you know): April 16, 2013

(4) Nature of the proceeding: Post Conviction Relief Act Petition ("PCRA")

(5) Grounds raised: Trial Counsel was ineffective for; 1) Failure to request Kloiber charge; 2) Request an alibi instruction; 3) Suppress identification; 4) curative instruction; 5) Fair cross Section; 6) cumulative error

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

❒ Yes ❒ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Petitioner was Denied his Constitutional Right to Counsel in violation of the 6th & 14th amendments of the United States Constitution when Trial Counsel Failed to request an alibi instruction after presenting Alibi Evidence.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At trial, James Fowler testified that Petitioner was home when the crime occurred. Trial Counsel Failed to request that the trial Court instruct the jury with an alibi instruction denying Petitioner due process

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Under Pennsylvania Law ineffective Assistance of Counsel must raised on PCRA

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief Act Petition

Name and location of the court where the motion or petition was filed:
Erie Court of Common Pleas, Erie Pennsylvania

Docket or case number (if you know): 2536 of 2010

Date of the court's decision: July 17, 2013

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court of Pennsylvania, Western District, Pittsburgh Pa.

Docket or case number (if you know): 1330 WDA 2013

Date of the court's decision: March 3, 2014

Result (attach a copy of the court's opinion or order, if available): affirmed Lower Court decision denying Relief.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Petitioner was Denied his right to Counsel in violation of the 6th and 14th Amendments of the United States Constitution when Trial Counsel Failed to File a motion to suppress only eyewitness in-court identification.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel Failed to File motion to suppress Bruce Wagner's in-Court identification. Mr. Wagner identification was the result of impermissabily suggestive procedures which in turn denied Petitioner due Process.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: under Pennsylvania Law ineffective Assistance of Counsel must be raised on PCRA

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief Act

Name and location of the court where the motion or petition was filed:

Erie County Court of Common Pleas, Erie Pennsylvania

Docket or case number (if you know): 2536 of 2010

Date of the court's decision: July 17, 2013

Result (attach a copy of the court's opinion or order, if available): Lower Court denied relief

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court of Pennsylvania, western District, Pittsburgh

Docket or case number (if you know): 1330 WDA 2013

Date of the court's decision: March 3, 2014

Result (attach a copy of the court's opinion or order, if available): affirmed Lower Court decision

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two

GROUND THREE: Petitioner was denied his Constitutional right to Counsel in violation of the 6th and 14th amendments of the United States Constitution where trial counsel failed to request curative instruction when the Prosecutor admitted Prejudicial evidence at trial.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel Failed to Request curative instruction after the trial Court deemed evidence of a shotgun Found in Petitioner's residence Prejudicial. This evidence denied Petitioner his Fundamental right to a Fair trial, and trial Counsel Failed to request an appropriate charge.

(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Under Pennsylvania Law ineffective Assistance of Counsel must be raised at PCRA Level.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief Act Petition

Name and location of the court where the motion or petition was filed:

Erie County Court of Common Pleas, Erie Pennsylvania

Docket or case number (if you know): 2536 of 2010

Date of the court's decision: July 17, 2013

Result (attach a copy of the court's opinion or order, if available): denied Relief

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court of Pennsylvania, western District, Pittsburgh, PA

Docket or case number (if you know): 1330 WDA 2013

Date of the court's decision: March 3, 2014

Result (attach a copy of the court's opinion or order, if available): affirmed Lower Court decision

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: Petitioner was denied his Constitutional Right to Counsel in violation of the 6th and 14th amendment when trial Counsel Failed to request Kloiber instruction where the evidence supported an instruction.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner contends trial Counsel Failed to request a Kloiber charge where the eyewitness equivocated on a prior opportunity to identify Petitioner. such instruction would have given the jury proper instructions on how to view Mr. Wagner's in-Court identification. Mr. Wagner Failed to identify Petitioner nor did he ever identify Petitioner prior to any Court appearances. In Court, was the First time Mr. Wagner made an identification of Petitioner.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Under Pennsylvania Law ineffective Assistance of Counsel must be raised on "PCRA"

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief Act

Name and location of the court where the motion or petition was filed:
Erie County Court of Common Pleas, Erie Pennsylvania

Docket or case number (if you know): 2536 of 2010

Date of the court's decision: July 17, 2013

Result (attach a copy of the court's opinion or order, if available): denied relief

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court of Pennsylvania Western District, Pittsburgh PA

Docket or case number (if you know): 1330 WDA 2013

Date of the court's decision: March 13, 2014

Result (attach a copy of the court's opinion or order, if available): affirmed Lower Court decision

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: DAvid Ridge, Esquire

(b) At arraignment and plea: DAvid Ridge, Esquire

(c) At trial: DAvid Ridge, Esquire

(d) At sentencing: DAvid Ridge, Esquire

(e) On appeal: Nicole Solane

(f) In any post-conviction proceeding: Public Defender's OFFice

(g) On appeal from any ruling against you in a post-conviction proceeding:

Pro Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

The present Petition is timeLy!!

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

or any other relief to which petitioner may be entitled.

____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on MAY 18, 2014 (month, date, year).

Executed (signed) on May 18, 2014 (date).

Terence Fowler
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.